

1 Gary S. Lincenberg - State Bar No. 123058
glinenberg@birdmarella.com
2 Ariel A. Neuman - State Bar No. 241594
aneuman@birdmarella.com
3 Ray S. Seilie - State Bar No. 277747
rseilie@birdmarella.com
4 BIRD, MARELLA, BOXER, WOLPERT, NESSIM,
DROOKS, LINCENBERG & RHOW, P.C.
5 1875 Century Park East, 23rd Floor
Los Angeles, California 90067-2561
6 Telephone: (310) 201-2100
Facsimile: (310) 201-2110

7 Attorneys for Defendant Stephen Keith
8 Chamberlain
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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**
12

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 vs.

16 MICHAEL RICHARD LYNCH AND
STEPHEN KEITH CHAMBERLAIN

17 Defendants.
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CASE NO. 3:18-cr-00577-CRB

**DEFENDANT STEPHEN
CHAMBERLAIN'S STATEMENT
REGARDING GOVERNMENT'S
PROPOSED BILL OF
PARTICULARS**

Date: June 3, 2022

Time: 1:30 p.m.

Crtrm.: ____

Assigned to Hon. Charles R. Brever

1 **I. INTRODUCTION AND BACKGROUND**

2 Defendant Stephen Chamberlain submits this statement to address the
3 insufficiency of the Government’s proposed bill of particulars (which the
4 Government submitted in connection with the parties’ May 4, 2022 Stipulation).
5 ECF No. 110, Ex. A.

6 As the Stipulation notes, the parties have substantially narrowed the scope of
7 the issues presented to the Court by Mr. Chamberlain’s November 1, 2021 Motion
8 for Bill of Particulars. ECF No. 85. Based on the Government’s representation that
9 its case against Mr. Chamberlain as to Counts 1 through 15 will involve the same
10 transactions for which it introduced evidence of impropriety in the *United States v.*
11 *Hussain* trial, Mr. Chamberlain previously agreed to withdraw his motion as to those
12 counts.

13 With respect to Count 17, Mr. Chamberlain’s motion initially asked the Court
14 to order,

15 For each overt act allegedly committed in furtherance of the conspiracy
16 charged in Count 17 in Paragraphs 34(a) through (g) [of the First
17 Superseding Indictment (“FSI”)], identify (1) which of the four alleged
18 objects of the conspiracy (as stated in Paragraph 32) the government
19 alleges were furthered by the act; (2) the identities of all alleged
20 coconspirators the government alleges participated in the act; and (3)
the basis on which the government contends that the act furthered the
alleged conspiracy.

21 ECF No. 85 at 19.

22 Thereafter, as part of the parties’ meet-and-confer discussions, Mr.
23 Chamberlain proposed a draft bill of particulars that, in his view, would adequately
24 clarify the nature of Count Seventeen as charged against him. A copy of that
25 proposal is attached as **Exhibit 1**. Mr. Chamberlain’s proposal would have the
26 government state that the only overt act with which Mr. Chamberlain is charged is
27 the one that names him as an actor: Paragraph 34(e), which alleges that “[o]n or
28 about February 3, 2012, CHAMBERLAIN and Hussain directed an HP finance

1 employee to falsely record approximately \$5.5 million in revenue to be included in
2 HP's financial statements for the period ending January 31, 2012." It would narrow
3 the applicable scope of Paragraph 32 to the related statute: circumvention of a
4 system of internal accounting controls in violation of 15 U.S.C. § 78m, as alleged in
5 Paragraph 32(a). And it would clarify that the objective described in Paragraph 33
6 that Mr. Chamberlain is alleged to have furthered is the falsification of HP's
7 business records, as alleged in Paragraph 33(a).

8 In response, the Government proposed a broader bill of particulars (submitted
9 as Exhibit A to the parties' stipulation, ECF No. 110) that would include two
10 additional overt acts that relate to Mr. Chamberlain: Paragraphs 34(h) ("In or about
11 May 2012, a co-conspirator instructed an HP employee to erase CHAMBERLAIN's
12 laptop computer and any backup.") and 34(k) ("On or about July 6, 2012, LYNCH
13 caused the incorporation of ICP London Limited ('Invoke') in the British Virgin
14 Islands. LYNCH used Invoke and entities affiliated with Invoke as a means to pay
15 former Autonomy employees, including Hussain."). It correspondingly alleges that
16 Mr. Chamberlain conspired to violate witness tampering and obstruction laws, and
17 that Mr. Chamberlain furthered the objective of "altering, destroying, mutilating,
18 and concealing records, documents and objects with intent to impair their integrity
19 and availability for use in official proceedings" and "otherwise obstructing,
20 influencing, and impeding official proceedings." ECF No. 111 at 6.

21 Mr. Chamberlain respectfully submits that the Government's proposed bill of
22 particulars fails to meet the requirements of Federal Rule of Criminal Procedure 7
23 because it fails to describe, with adequate precision, what specific conduct Mr.
24 Chamberlain committed in connection with the overt acts alleged in Paragraphs
25 34(h) and 34(k) of the FSI.

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1 **II. ARGUMENT**

2 **A. The Government’s Proposed Bill of Particulars Fails to Provide**
 3 **Mr. Chamberlain the Precise Nature of the Charges Against Him**

4 Although narrower than the version of Count 17 alleged in the FSI, the
 5 Government’s proposed bill of particulars still fails to “inform [Mr. Chamberlain] of
 6 the nature of the charge against him with sufficient precision to enable him to
 7 prepare for trial.” *United States v. Giese*, 597 F.2d 1170 (9th Cir. 1979).

8 Specifically, the Government’s proposal does not explain what acts *Mr.*
 9 *Chamberlain* is alleged to have committed in connection with the overt acts in
 10 Paragraph 34(h) and 34(k), neither of which describes him as an active participant.

11 Paragraph 34(h) alleges that another unnamed “co-conspirator” instructed
 12 another unknown “HP employee” to erase Mr. Chamberlain’s computer “[i]n or
 13 about May 2012”—months after he stopped working for Autonomy. It does not
 14 allege that Mr. Chamberlain knew of or in any way assisted the unnamed HP
 15 employee in erasing his computer. The Government’s proposed bill of particulars
 16 does not supplement this allegation in any way—it only states that this allegation
 17 “relat[es] to” Mr. Chamberlain. That does not inform Mr. Chamberlain, with the
 18 required precision, how he is alleged to have participated in the destruction of his
 19 computer data (and against what specific facts he will have to defend in connection
 20 with that charge).

21 Likewise, Paragraph 34(k) alleges, “On or about July 6, 2012, LYNCH
 22 caused the incorporation of ICP London Limited (‘Invoke’) in the British Virgin
 23 Islands. LYNCH used Invoke and entities affiliated with Invoke as a means to pay
 24 former Autonomy employees, including Hussain.” The only actor named in this
 25 allegation is Mr. Lynch. The allegation does not state that this overt act was
 26 committed with any co-conspirators. The Government’s proposed bill of particulars
 27 does not add any new detail: it does not allege any facts indicating that Mr.
 28 Chamberlain aided this effort by Mr. Lynch, or that Mr. Chamberlain in any way

1 joined a conspiracy to influence witnesses or otherwise impede the government's
 2 investigation. As with the government's reference to Paragraph 34(h), Mr.
 3 Chamberlain is left to guess what acts he is charged with committing, and how to
 4 defend against those charges.

5 The only "overt act" alleged in Count 17 that actually describes conduct by
 6 Mr. Chamberlain is Paragraph 34(e)—"direct[ing] an HP finance employee to
 7 falsely record revenue." The statute this allegedly relates to is 15 U.S.C. § 78m. The
 8 related objective is "falsifying, destroying, and stealing business records of HP".
 9 Paragraphs 32 and 33 of the FSI should therefore be narrowed appropriately. These
 10 revisions are reflected in Mr. Chamberlain's proposed bill of particulars, attached as
 11 Exhibit 1.

12 **B. The Government Should Not Be Permitted to Charge Mr.**
 13 **Chamberlain Based on Acts for Which It Does Not Have**
 14 **Supporting Evidence**

15 During the meet-and-confer process, the government has acknowledged that it
 16 is not presently aware of specific evidence suggesting that Mr. Chamberlain
 17 participated in the destruction of his laptop, or in Mr. Lynch's hiring of former
 18 Autonomy employees. Thus, Mr. Chamberlain cannot even locate any particulars in
 19 the discovery. Instead, the government's proposed bill of particulars states only that
 20 Paragraphs 34(h) and 34(k) describe acts that "relate" to Mr. Chamberlain. That
 21 does not provide particulars of any criminal act committed by Mr. Chamberlain.
 22 While Paragraph 34(h) "relates" to Mr. Chamberlain because it concerns the
 23 destruction of his former computer, the Government has not alleged (or identified
 24 evidence suggesting) that Mr. Chamberlain was involved in that act. The same is
 25 true for Paragraph 34(k): while that allegation may "relate" to Mr. Chamberlain
 26 because he is a former employee who was eventually hired by Darktrace, the
 27 government has not alleged (or identified evidence that would support an allegation)
 28 that Mr. Chamberlain participated in that process, and Mr. Chamberlain could not be

1 convicted of conspiracy based on that act alone without evidence of such
2 participation.

3 Counsel is unaware of—and the government has not identified any—evidence
4 that Mr. Chamberlain actually participated in either of the two additional acts that
5 the government seeks to include in its proposed bill of particulars, and there is no
6 reason to permit the government to maintain these allegations without specifying
7 what specific acts Mr. Chamberlain committed to support a theory that he
8 participated in the alleged acts. Accordingly, its proposed bill of particulars still fails
9 to comply with the requirements of Federal Rule of Criminal Procedure 7 as to
10 Count 17.

11 **III. CONCLUSION**

12 For these reasons, the Court should conclude that the Government’s proposed
13 bill of particulars fails to comply with the requirements of Rule 7, and that the
14 Government should file Mr. Chamberlain’s proposed bill of particulars.

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16 DATED: May 13, 2022

Gary S. Lincenberg
Ariel A. Neuman
Ray S. Seilie
Bird, Marella, Boxer, Wolpert, Nessim,
Drooks, Lincenberg & Rhew, P.C.

21 By: /s/ Gary S. Lincenberg
22 Gary S. Lincenberg
23 Attorneys for Defendant Stephen Keith
24 Chamberlain
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EXHIBIT 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL RICHARD LYNCH AND
STEPHEN KEITH CHAMBERLAIN

Defendants.

CASE NO. 3:18-cr-00577-CRB

**UNITED STATES' BILL OF
PARTICULARS FOR COUNT
SEVENTEEN OF THE FIRST
SUPERSEDING INDICTMENT AS
TO DEFENDANT STEPHEN
CHAMBERLAIN**

**[PROPOSED BY DEFENDANT
STEPHEN CHAMBERLAIN]**

Assigned to Hon. Charles R. Brever

1 The United States files this bill of particulars as to Count Seventeen of the
2 First Superseding Indictment ("FSI"), as charged against Defendant Stephen
3 Chamberlain.

4 1. The overt act alleged in Count Seventeen of the First Superseding
5 Indictment against Mr. Chamberlain is the act alleged in Paragraph 34(e), to wit that
6 "[o]n or about February 3, 2012, CHAMBERLAIN and Hussain directed an HP
7 finance employee to falsely record approximately \$5.5 million in revenue to be
8 included in HP's financial statements for the period ending January 31, 2012."

9 2. The specific offense in Paragraph 32 that Mr. Chamberlain is alleged to
10 have conspired to commit is "(a) circumventing a system of internal accounting
11 controls of an issuer of securities registered under Section 12 of the Securities
12 Exchange Act of 1934, in violation of [15 U.S.C. § 78m]."

13 3. The conspiracy objective alleged in Paragraph 33 in which Mr.
14 Chamberlain is alleged to have participated is to "cover up" or "conceal" the
15 "scheme to defraud set forth in paragraphs 19 through 24" by falsifying business
16 records of HP.

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18 DATED: March __, 2022

Respectfully submitted,

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20 STEPHANIE M. HINDS
United States Attorney

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22 _____
ROBERT S. LEACH
23 ADAM A. REEVES
24 Assistant United States Attorneys
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